



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/171766

PRELIMINARY RECITALS

Pursuant to a petition filed January 29, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regards to the sufficiency of FoodShare benefits (FS), a hearing was held on February 24, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly reduced the petitioner's FS allotment from \$143 to \$68, effective February, 2016, due to a change in the standard utility allowance policy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. Petitioner receives FS as a one-person household. The petitioner received \$143 in FS in January, 2016.
2. Petitioner had a review in January, 2016. He reported that he lives with his father and pays no rent or utility expense and does not have a telephone utility.

3. The Department changed its policy in recent months toward counting shelter expenses in the FS determination. Previously, all FS households received a \$450 utility expense. The policy changed to provide that only expenses actually paid by the household can be counted. Petitioner received \$0 excess shelter deduction in the February, 2016, FS computation, where he had previously been receiving the full utility standard allowance of \$458. As a result of this change, petitioner's FS decreased to \$68 effective February, 2016. See, Exhibit #1, at pp. 2a and 2b.
4. The agency issued a Notice of Decision to the petitioner on January 18, 2016, informing him that his FS would be reduced from \$143 to \$68, effective February 1, 2016, because his household's utility expenses had decreased. See, Exhibit #1, at pp. 10-14.
5. The petitioner filed an appeal with the Division of Hearings & Appeals on January 29, 2016; benefits were continued pending the hearing decision.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$155 per month. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FS Handbook, App. 4.6.7.

In January, 2016, petitioner's shelter expense was \$458 resulting from a deemed standard utility allowance all FS recipients. This then generated an excess shelter expense deduction from his income, for FS budgeting purposes, of \$249.28. For February, 2016, after annual review, he received no shelter deduction because he pays no rent or utility and the policy granting a deemed standard utility allowance has ended.

As a side-note to the petitioner, prior to the federal 2014 Farm Bill the Wisconsin Department of Administration issued an annual energy assistance payment of \$1 to all FS households who were not already receiving energy assistance. This policy allowed Wisconsin to grant all FS households the Heating Standard Utility Allowance of \$450. Actual utility usage did not matter. The 2014 Farm Bill changed this practice. The 2014 Farm Bill requires a household to have received an energy assistance payment of greater than \$20 to receive the \$450 utility standard. 7 U.S.C. 2014(e)(6)(C)(ii)(I). Therefore households that do not receive energy assistance receive the utility standard based on the utility obligation actually incurred by the household. Petitioner did not receive energy assistance and cannot afford a telephone.

This change then affected his net adjusted income, increasing it from \$168.17 to \$417.45. FS computations base the allotment upon the maximum allotment for 1 person, \$194, minus 30% of the net adjusted income. 30% of the petitioner's net adjusted income is \$125.10. ($\$417 \times 30\% = \125.23). Thus, give or take 13 cents, the agency correctly determined that $\$194 - 125.10 = \68 of FS, rounded down.

I must conclude that the agency correctly reduced petitioner's FS to \$68. The change was due to a change in policy that was forced by federal FS law. Petitioner testified that the reduction has left him in a difficult financial situation because he will run out of money before the end of the month, and his father will be difficult because he is no longer bringing in \$143 of FS. However, first, his father's needs are not counted in the FS household. If they were, his income would need to be counted too. The effect of that would be unknown on this record. In any event, the petitioner chose to file as a one person FS household. Second, and more importantly, the Division of Hearings and Appeals does not have authority to order a higher FS amount than the amount calculated by the FS rules. The instant appeal is dismissed.

CONCLUSIONS OF LAW

The agency correctly reduced petitioner's FS due to a reduction in his allowable shelter expense due to a change in FS policy under law; he has no actual shelter expenses and he is no longer deemed to have any under policy.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of March, 2016

\\sKenneth D. Duren, Assistant Administrator
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 2, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability